



March 4, 2024

The Honorable Sarah Netburn
United States Magistrate Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square Room 430
New York, NY 1000

Re: *Lynne Freeman v. Tracy Deeks-Elkenaney et. al.*, Case No. 22 Civ 2435 (LLS) (SN)

Dear Judge Netburn:

We write on behalf of Plaintiff Lynne Freeman to address Defendants' Supplemental Motion Regarding Evidentiary Issues ("Suppl. Motion to Strike" ECF 344) which seeks to strike certain of Freeman's filings, including her additional undisputed material facts ("ASUF") in her Response to Defendants' Local Rule 56.1 Statement ("Pl's Response to Def's Rule 56.1 Statement" ECF 330). That Suppl. Motion to Strike was not contemplated or authorized by this Court's Second Amended Scheduling Order ("Scheduling Order" ECF 269), and there is nothing in that Order allowing Plaintiff to respond to it. Plaintiff respectfully requests that the Court strike Def's' Suppl. Motion to Strike or in the alternative set a date by when Plaintiff may file an opposition to the Suppl. Motion to Strike

On February 28, 2024, Defendants jointly filed a 20-page Reply re Copyright Claims (ECF 342), and the Prospect Defendants filed a 10-page Reply re State Law Claims (ECF 348) (collectively "Reply Briefs"). For the reasons set forth below, those briefs violated the Scheduling Order, which provided that each brief should be no longer than 15 pages. (ECF 269).

On the same day, Defendants jointly filed Defs' Suppl. Motion to Strike consisting of another 17 pages, which serves more as a supplemental reply brief than evidentiary objections. That Suppl. Motion contains four main arguments that are as follows:

- (1) Plaintiff's ASUFs should be stricken as wasteful, untimely and prejudicial¹;
- (2) the declarations of Plaintiff's experts Kathryn Reiss ("Reiss") and Carole Chaski should be stricken because they improperly revise the opinions set forth in their

¹ Plaintiffs ASUFs were proper and authorized by the Local Rules. See L.R. 56.1(b). While it is unclear under the Local Rules if the moving party is obligated to respond to Plaintiff's ASUFs, Plaintiff contends they are, and as a result of Defendants' failure to contest them, each ASUF should be deemed admitted.

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expert reports, and the declaration of Ron Kaplan (“Kaplan”), an information technology consultant, should likewise be stricken because he was not designated by Plaintiff as an expert;

(3) several objections set forth in Pl’s Response to Defs’ Rule 56.1 Statement should be overruled; and

(4) Plaintiff’s Opposition to Defendants Motion to Strike Evidence (“ECF 328”) submitted in response to Defendants’ Objections to and Motion to Strike Evidence (“ECF 309”), should be overruled on the grounds that Plaintiff’s opposition to the motion fails to resuscitate the inadmissible similarity indexes filed by Plaintiff.

Those arguments clearly should have been included in Defendants’ Reply Briefs. Yet Defendants improperly used Defs’ Suppl. Motion to increase their page limit for their Reply Briefs from 30 to 47 pages. Worse, they did so knowing that the Briefing schedule makes no allowance for Plaintiff to respond to that reference to a supplemental motion.

Defs’ Suppl. Motion should be stricken. The parties have filed well over a thousand pages of material in connection with their respective summary judgment and Daubert motions and each had ample opportunities to make all relevant arguments with respect to the issues before the Court. In the alternative, Plaintiff should be granted an opportunity to oppose Defendants’ “supplemental motion” and requests that the Court set a deadline by when Plaintiff may file that opposition.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

Reeder McCreary, LLP

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cc: All counsel of record (via ECF)